

Civil Service Board Meeting
Resolution of Fortenberry Grievance
2/6/14

Board Members Present

Marv Rosen
Alan Coxie
Carolyn Worthington
Lynn Moffa
Virginia Robinson

Staff and Guest Present

Chief Scott Burnette – Asheville Fire Dept.
Mike Knisely – Asheville Fire Dept.
Kelley Dickens – HR Director
Kelly Whitlock – City Attorney
Derrick Swing – Human Resources
Patsy Bryson – Civil Service Attorney
Jennifer Johnson – Human Resources
TJ Fortenberry – Asheville Fire Dept.
John Hunter – Attorney for Mr. Fortenberry

Marv Rosen (Civil Service Chair): Welcome. Today's agenda is fairly brief, we have several items. First is the approval of November and December minutes. I have spoken to most of the Board and they have not had time to read the minutes from November and December so we do not want to submit them formally and pass a motion today.

We appreciate the effort by the City to get those 142 pages typed up.

Also, to continue to discuss the draft of a motion discussed 1/16/14 pertaining to the Fortenberry grievance in regard to the Asheville Fire Department's promotional policies and regarding the concept of graying in. We're hoping to finalize today.

Chief, any update in the department on how to approach resolution?

Chief Burnette: Yes Sir, Looking at comments and suggestions from the Board identifying ways that we can meet the intent of the 1/3/14 order of the Civil Service Board...We have come up with a mechanism to create a 49th Company Officer position that is sustainable. The concerns we talked about on 1/15/14 that we talked about with the Civil Service Board about the different options concerning promoting Mr. Fortenberry, it addresses all those. Just as a review of what those are: Those potential negative outcomes, potential impacts for others in the department, potential impacts of Mr. Fortenberry to address as many of those as possible.

Promoting Mr. Fortenberry and waiting for a position to come open and have an extra officer, we talked about the potential impacts of that, how that would impact the current list. This mechanism of creating a sustainable 49th Company Officer which will be a new additional position does not impact current promotional list retirements and things of that nature, the fact that it is sustainable without Budgetary

resources does not require Council approval or appropriation from City Council. Certainly , a mechanism to utilize administratively the department, this will allow Mr. Fortenberry and then all those on the current eligibility list, it's not a situation where it can be viewed as he's taking someone's spot on the existing list. We feel good about that.

I had an opportunity to meet with Mr. Fortenberry this morning and talked to him in greater detail about the specifics of the mechanics of that as well.

The next action item related to this is to bring information back to the Civil Service Board at the Board's request about the use of gray listing. We have already reached out to other departments that use that practice and are getting back information, we also want feedback from the department and we've got a mechanism for that in the works to get feedback from everyone in the department and bring it back to the Civil Service Board.

That's the update and I expect to have all that information back on the utilization and their experiences, good and bad, from using that practice and also feedback from the department at the March 6th Civil Service meeting. If it pleases the Board for that to be an agenda item.

Marv Rosen: Any Board member have any suggestions or comments?

Virginia Robinson: What is the effective date of this promotion of Mr. Fortenberry?

Chief Burnette: The grievance that he filed was in my understanding of the order of the Board was issued on 1/3/14. It was that change that was made 2011 that impacted 2012 promotional list, impacted his promotion with a date of June 1st 2012. It's my understanding of the intent of the C.S. Board would be that action, if it were to be rescinded, that would be the date of that promotion.

Marv Rosen: That's the 2013 list?

Chief Burnette: Yes, Sorry.

Virginia Robinson: It would be retro back to that date?

Chief Burnette: It's my understanding that would be the order.

Marv Rosen: It seems to me to be a fair solution. I'm glad that you were able to find a way that offends no one and still serves the department well in terms of the 49th company officer.

Any comments?

Next item: Look at a draft motion prepared by Patsy Bryson and Kelley Dickens. I know there is at least one comment for change. (Versions of 1, 2 and 3 are attached).

Patsy Bryson: There are 2 comments, one from Mr. Coxie and Ms. Moffa also had some suggestions which include the changes made by Mr. Coxie.

Copies were given out to Board and City Staff.

The changes recommended as I understood; the first one I'm sending along is underlined language changes made by Mr. Coxie. The second one shows highlighted in yellow, Ms Moffa.

Derrick Swing made extra copies and they were passed out.

Marv Rosen: Opened for discussion the terms of Mr. Coxie's and Ms. Moffa's changes.

Alan Coxie: Can we have a moment to look at them?

Marv Rosen: Certainly

Patsy Bryson: I did not include copies of the one I sent out by e-mail. I'd be happy to send out copies of them.

Mr. Chair, I believe everyone has a copy and might need more time to look at all three versions.

Mr. Chair, I would be happy to read all three into record but I think it would be more helpful to label them 1, 2 and 3 for simplicity.

We will label the one sent out to the Board via e-mail by me, a copy was sent to Mr. Hunter, attorney for Mr. Fortenberry, also to Kelly Whitlock, Kelley Dickens, Derrick Swing and Council Liaison, Gwen Wisler. We will label that one #1 and that would be the official version.

We'll label #2, the one Mr. Coxie is suggesting...some language is underlined and doesn't include deletions, and some other changes when compared to #1. There are some changes.

We'll label #3 the one with the yellow highlighted language suggested by Ms. Moffa taking in suggestions made by Mr. Coxie. This is the one sent to Kelley with the language I crafted and then to you for discussion.

Marv Rosen: Asked Mr. Coxie what was his rationale for his suggestions and changes in the first paragraph?

Alan Coxie: I appreciate Patsy's work on this motion. I was uncomfortable with the term "retroactively". I'm uncomfortable approving something that I have not seen. I think it is a bad process. I prefer to approve the results on the existing promotional process from 2004. This achieves the result without having to approve something retroactively. I split it apart and made 2 separate motions thinking it would be a little clearer and did add a word and left out a word or two. I added a word or two to the bottom to clarify.

Marv Rosen: Comments? Which words?

Alan Coxie: The required amount of time.

Virginia Robinson: One suggestion, on #3 version, on the highlighted part, I don't quite agree, change #2 to say that it will apply "solely" to Mr. Fortenberry and not dealing with other people.

Marv Rosen: Thoughts, Ms. Moffa?

Lynn Moffa: The reason for added language is; agrees with Mr. Coxie

Marv Rosen: Eliminate the highlighted part and change to applies solely to Mr. Fortenberry, second paragraph, graying in, I hesitate to include that. It seems affirmative or approving graying in. Any other thoughts?

Lynn Moffa: Agree

Marv Rosen: Chief, Mr. Hunter, Ms. Whitlock, it appears that we're back to #2. Would someone like to make a motion?

Alan Coxie: Any comments from anyone else?

John Hunter: Since it is being crafted solely to Mr. Fortenberry and he is promoted as back in December, I'll defer any comments, removing retro is probably helpful. Reserve comment.

Alan Coxie: Two motions; 1. Approve results of language deletion of "retroactively"

2. Change to add "solely" to second paragraph

Virginia Robinson: Second

Marv Rosen: All in favor say Aye. All in favor none opposed, motion is passed.

Patsy Bryson: Minutes are required for closed sessions and are to be kept sealed per NC law. Will pass to the Board to read, only for Board members. I would recommend that you approve them. All do not need to sign it and I will need it back.

(Board reviews)

Motion to approve closed session minutes of 12/17/13 and they remain sealed.

Alan Coxie: Second

Marv Rosen: Thanks Chief.

Chief Burnette: Thanks for your time and we will work on this resolution.

Marv Rosen: Anything else, comments?

Kelley Dickens: There's a little something in the mail for you, basketball tickets to show appreciation for the Board.

Comments about tickets from the Board.

Marv Rosen: Adjourned